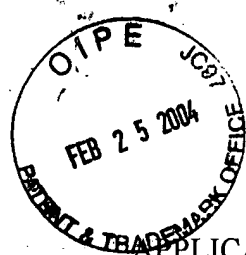


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P-3952-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: JOYCE BRETT
MARK: A BAND-AID APPLIED JEWELRY DISPLAY
SERIAL NO.: 10/029,818
FILED: December 31, 2001
EXAMINER: Katherine W. Mitchell, Examiner, Art Unit 3677

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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NOTICE OF APPEAL

Applicant appeals the FINAL REJECTION of 12/24/2003 and herewith submits the Notice of Appeal fee of \$165 and the Brief of Applicant fee of \$165.

BRIEF OF APPLICANT

1. Real Party in Interest

The applicant above named.

2. Related Appeals or Interferences

None.

3. Status of Claims

There is one claim on appeal as set forth in the appendix.

4. Status of Amendments After Final Rejection

None.

02/27/2004 JADD01 00000041 10029818
01 FC:2401 165.00 OP
02 FC:2402 165.00 OP

5. Summary of Invention

Used to advantage is a commercially available article of manufacture, namely, a Johnson & Johnson BAND-AID^{*}, consisting of a central gauze pad 18 with opposite direction left and right extending adhesive strips 20 and 22, wherein the gauze pad 18 has an array, generally designated 24, of plural edges bounding circular openings, individually and collectively designated 26, shown greatly simplified in the cross sectional view of Fig. 5, providing ventilation for a gauze pad-covered injury (not shown). The present invention combines two practices, namely first as noted the using to advantage, of the availability of a Band-Aid 16 and second to achieve the location of a rhinestone display 10 at a cheek location 14, as well as at other selected locations on the person 12.

For its medical or first aid end use, the central gauze pad 18 has release strips 28 and 30 in overlapping relation, as at 32, beneath the gauze pad 18, each of which is connected to extend from the gauze pad 18 in contact against the adhesive surfaces of the adhesive strips 20 and 22 to thusly neutralize or obviate an adhesive function of the adhesive strips 20, 22 until the Band-Aid 16 is put to use. While the release strips 28 and 30 are in place, the Band-Aid 16 is readily handled without difficulty, and the handling contemplates the deposit of a viscous, not yet cured, appropriate adhesive 34, such as an adhesive commercially available from East Coast Labs of Greensboro, NC, on a top surface covering 36 of the gauze pad 18, from which deposit there is flow in depending relation within the venting openings 26 effective to contribute to gripping engagement of the adhesive deposit 34 to the top or display surface 36.

Before the adhesive cures, i.e., while still in its viscous condition, the rhinestones 10, in a selected display, are placed, either manually or by machine, in adhesive contact with the adhesive 34, resulting in the ultimate adhesive securement of the jewelry display 10 on the Band-Aid 16.

^{*} In the patent application, BAND-AID is replaced by a generic designation.

To maximize the display value of the Band-Aid applied jewelry display 10, use is made of adhesive strips 20 and 22 having clear plastic construction material providing unobstructed visibility therethrough of the skin of the user 12 at the selected site of attachment of the Band-Aid 16, an aspect noted by the phantom perspective illustration of the strips 20, 22 in Fig. 1, which to a viewer sees the jewelry display 10 in isolated relation apart from the Band-Aid 16. By eschewing the current practice of manually placing, in sequence, an adhesive deposit at a site of attachment and an arranged rhinestone or like display objects in the adhesive deposit, and allotting an appropriate time interval for the curing of the adhesive, the providing of a jewelry display worn on the person is correlated to the placement of a jewelry-adorned Band-Aid.

6. Issue pursuant to 37 CFR 1.192(e)(6).

- A. Whether claim 1 is properly rejected under 35 U.S.C. 112, first paragraph as adding new matter in referring to “first an second adhesive deposits.”
- B. Whether claim 1 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over Vesey USP 6,455,752 in view of Arginsky US D340,988 and Amen-Ra A, USP 6,472,039.

7. Grouping of Claims

Grouping does not apply.

8. Argument pursuant to 37 CFR 1.192(c)(8).

Issue A

The application discloses two adhesives, one deposited by the manufacture of the article of manufacture (i.e., Johnson & Johnson) of the bandage 16, and the other by the applicant in preparation of arranging for a jewelry display using the bandage 16. The Johnson & Johnson deposit is designated 20 and 22 and that of the applicant designated 34. There is also a time

sequence of the applications of the two adhesives, namely, that Johnson & Johnson being first, and by the applicant being second, and thus the claim references are properly made to “a first deposit” and “a second deposit.”

Accordingly, the rejection under 35 U.S.C. 112, first paragraph should be overruled.

Issue B

The examiner recited what Vesey discloses, and also that this reference “does not specifically teach venting openings . . . [and] is also silent on first and second adhesive deposits and that rhinestone jewelry is adhesively secured.”

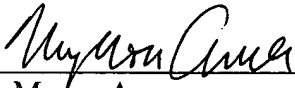
The non-disclosure of venting openings arguably is not fatal to the examiner’s position on anticipation because applicant has noted at application page 3, at line 1, that they “[provide] ventilation for a gauze pad-covered injury.” What is fatal, however, is the further use of the vent openings as a repository “of a viscous, not yet cured, . . . adhesive . . . on a top surface covering 36 of the gauze pad 18, from which deposit there is flow in depending relation within the venting openings 26 effective to contribute to gripping engagement of the adhesive deposit 34 to the top or display surface 36,” at application page 3, lines 1-15. The aforesaid is embodied in the claim on appeal.

In the absence of this disclosure the rejection fails to apply the holding in *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) and, more particularly, that on the issue of anticipation all limitations of a claim must be considered, i.e., the reference to the proposition “the name of the game is the claim,” which appears on the cited page of *Hiniker*.

It is respectfully requested that the rejection of claim 1 be reversed.

Respectfully,

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Dated: February 23, 2004

APPENDIX

1. A method of arranging for a jewelry display to be worn on the person at a location on which a cosmetic is typically applied on said person comprising the steps of : using an adhesive bandage having a central gauze pad, using opposite direction laterally extending strips of clear plastic construction material from opposite sides of said central gauze pad, applying a first adhesive deposit on said laterally extending strips on a surface thereof in facing relation to a site of attachment to a user thereof effective for attachment of said adhesive bandage to said user, using overlapping release strips extending beneath said first adhesive deposit for attachment to said strips effective to obviate an adhesive function of said first adhesive deposit on said strips, said central gauze pad being characterized by an outwardly facing display surface in covering relation thereover and having an array of spaced apart edges bounding venting openings in communication with said gauze pad, applying a second adhesive deposit when in a viscous state on said display surface, flowing said second adhesive deposit into said venting openings effective to contribute to gripping engagement of said second adhesive deposit to said display surface, maintaining an overlapping of said release strips beneath said central gauze pad to serve as a closure for said venting openings effective to prevent leakage of said viscous adhesive from said venting openings, applying a rhinestone jewelry display that is adhesively secured to said display surface of said central gauze pad, allowing a curing of said second adhesive deposit for permanently attaching said jewelry display thereto, and removing said release strips and placing said adhesive bandage at a location selected for appearance enhancement, whereby said jewelry is displayed in isolated relation on the person correlated to said site of attachment of said adhesive bandage.